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Crl.O.P.No.24618 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.24618 of 2022

Amala Paul
Complainant

... Petitioner / Defacto

Vs.

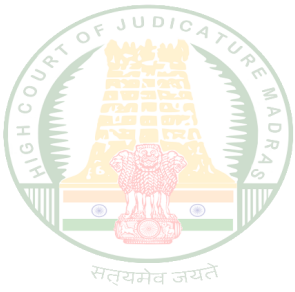
1. Deputy Superintendent of Police
District Crime Branch,
Villupuram District.... 1st Respondent / Complainant

2. Bhavninder Singh Dhatt (Bhuvi)

... 2nd Respondent / A1

PRAYER: Criminal Original Petition filed under Section 439(2) read with Cr.P.C., prayed to cancel the bail granted to the 2nd respondent / 1st Accused vide order dated 05.09.2022 in C.M.P.No.2445 of 2022 by the learned Judicial Magistrate, Vanur, Villupuram.

For Petitioner : Mr. S. Kaushik Ramasamy
For R1 : Mr.R. Vinothraja
Govt. Advocate (Crl. Side)
For R2 : Ms. V. Kamala Kumar



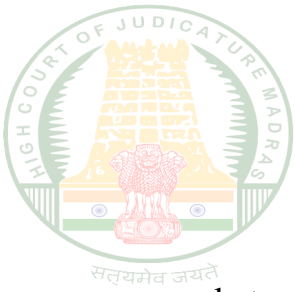
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ORDER

This petition has been filed by the defacto complainant seeking cancellation of bail granted to the 2nd respondent, who was the 1st accused in Crime No.26 of 2022, registered under Sections 120(B), 465, 511, 467, 468, 471, 420, 406, 419, 379, 354(C), 384, 500, 506(2) of IPC and Section 66(D) of the Information Technology Act, 2000 and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The bail had been granted to the 2nd respondent by an order of the learned Judicial Magistrate, Vanur, in C.M.P.No.2445 of 2022 by order dated 05.09.2022.

2.The primary ground, on which, the bail is sought to be cancelled is that the order passed by the learned Judicial Magistrate, Vanur, is very cryptic and no reasons had been given as to why bail was actually granted to the 2nd respondent / 1st accused. It is contended that during the course of enquiry, documents had been produced by the 2nd respondent for consideration and the learned Judicial Magistrate had marked those documents also as exhibits, but while passing the order had not referred to any of those documents and had passed an order in a few lines even though

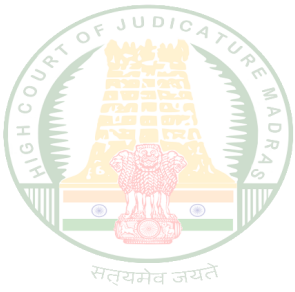


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substantial objections had been raised on behalf of the 1st respondent / Investigating Agency objecting to grant of bail. It had also been stated that there were no conditions imposed that the 2nd respondent should appear before the Investigating Agency. It was therefore contended that the order passed should be interfered with by this Court.

3. Notice had been directed to the 2nd respondent. The learned counsel who entered appearance questioned the right of the defacto complainant to raise objections relating to the order granting bail, which order is exercise of discretion by the learned Judicial Magistrate. It had been stated that discretion had been exercised after properly considering all relevant factors. It had also been contended that the entire issue revolved around a civil dispute between the defacto complainant and the 1st accused and it is therefore stated that to the extent possible necessary details have been examined by the learned Judicial Magistrate and on exercising discretion, in a judicious manner, the learned Judicial Magistrate had thought it would only be appropriate that bail is granted.



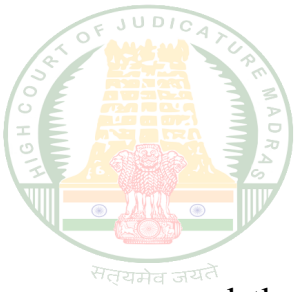
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4. With respect to the imposition of conditions, the learned counsel stated that if this Court were to impose additional conditions or further conditions, the 2nd respondent / 1st accused would wilfully abide with the same. It is therefore contended that this application seeking cancellation of bail has to be rejected.

5. The learned Government Advocate (Criminal Side) / 1st respondent also pointed out that the order under challenge passed by the learned Judicial Magistrate did not contain necessary details. It is contended that having taken on record documents, which were not actually required, the learned Judicial Magistrate had passed an order granting bail in a cryptic manner and there was no reason given as to why bail had been granted. It had been therefore stated that though strong objections had been raised on behalf of the Investigating Agency before the learned Judicial Magistrate without taking into consideration any of those objections, the bail had been granted.

6. Even before entering into the facts of the case, it is also incumbent on my part to state that, both the learned counsel for the petitioner



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and the learned Government Advocate had also produced judgments which give a broad outline of the grounds on which bail could be granted and the nature of the order granting bail and the grounds on which such an order could be interfered with or cancelled. But before going into those aspects, it is necessary that the facts of the prosecution case is recorded.

7.It is the case of the prosecution that the defacto complainant, who is the power of attorney agent of Ms.Amala Paul had lodged a complaint before the respondent stating that the 1st accused, who has been granted bail by the learned Judicial Magistrate, Vanur, was in relationship with the defacto complainant. All his family members projected themselves as being deeply involved in film production and took advantage of the fact that the defacto complainant was an actor of repute and formed a company for the purpose of producing and releasing a Tamil movie 'Cadaver'. It had been stated that originally there was an another producer who ran into trouble and thereafter the defacto complainant had taken over the existing company namely, Racky Story Private Limited and it was decided to invest in the movie through the company.

8.It had been stated that on A1's recommendation, A2 was

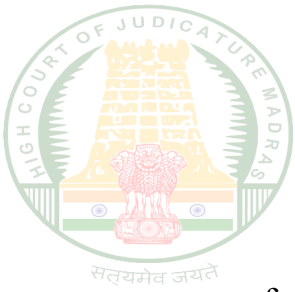


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appointed as Additional Director. The defacto complainant had entrusted all the documents relating to the company with the 1st and 2nd accused together with access to her account, access to the account of the company and also to her digital signature. It is further stated that A3 and A4 colluded to find distributors to stream the movie in other platforms and to sell the movie without obtaining specific permission from the defacto complainant. A6 was the auditor of the company and it is claimed that he had created false records. It is also stated that A7 had created a false Annual Report showing falsely that A1 was the main shareholder and also showing that A1 to A4 are the authorised persons to sell the movie to third parties. It had been stated that A8 and A9 are the parents of the 1st accused. It had been stated that the defacto complainant was caught in a web surrounded by all accused persons and she could not extricate herself from their clutches and by the time she found that she had been cheated of her valuable money, she had lost substantial amounts. It was under these circumstances that FIR in Crime No. 26 of 2022 had been registered by the respondent.

9. There were totally twelve accused. It had also been stated that during the course of investigation A1 had been arrested and he had also given

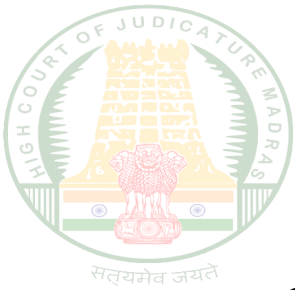


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a confession statement. A laptop and three unregistered documents alone had been seized. Thereafter, investigation has come to a standstill. None of the accused co-operated during the course of investigation.

10.The 1st accused then applied for bail in C.M.P.No.2445 of 2022. This came up for consideration before the learned Judicial Magistrate, Vanur and by an order dated 05.09.2022, bail was granted. It was noted by the learned Judicial Magistrate, after extracting the averments made in the petition and after hearing the arguments and taking on record documents filed as Exs.P1 to P14 it had been observed that a perusal of the documents showed that there were civil suits pending with respect to release of movie in OTT platforms and there was also a suit with respect to defamation and that the High court had also passed an order. It had also been noted that the 1st accused was in judicial custody for seven days. It had also been presumed that by this period of seven days, the respondent police would have completed their investigation so far as the 1st accused is concerned. It was also stated that the investigating agency had not stated that there were previous cases as against the 1st accused and taking into consideration all these factors had thought it would be appropriate to grant bail to the 1st



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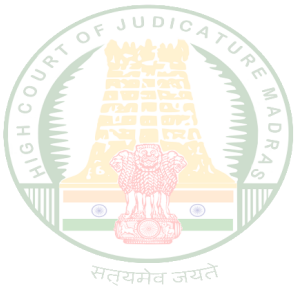
accused.
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11.This particular order is termed as cryptic by the learned counsel for the petitioner and by the learned Government Advocate, whereas, it is justified as containing necessary reasons for grant of bail by the learned counsel for the 2nd respondent / 1st accused.

12.Even before examining as to whether this order is cryptic or not, it would only be necessary to examine the factors which have to kept in mind while considering an application for bail.

13.In **(2010) 14 SCC 496, Prasanta Kumar Sarkar Vs. Ashis Chatterjee**, the Hon'ble Supreme Court had given the factors to be considered while granting bail. The Hon'ble Supreme Court had observed as follows:

- “(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*



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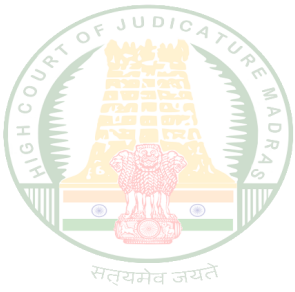
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- (v) *character, behaviour, means, position and standing of the accused;*
- (vi) *likelihood of the offence being repeated;*
- (vii) *reasonable apprehension of the witnesses being influenced; and*
- (viii) *danger, of course, of justice being thwarted by grant of bail.”*

14. In *Y v. State of Rajasthan, (2022) 9 SCC 269*, the necessity to give reasons while granting bail had been impressed upon by the Hon'ble Supreme Court in the following manner:

“24. The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the courts make a general observation that “the facts and the circumstances” have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court.”

15. In *Mahipal Vs. Rajesh Kumar, (2020) 2 SCC 118*, the Hon'ble Supreme Court had also observed as follows:



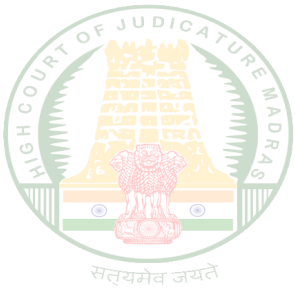
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“25. Merely recording “having perused the record” and “on the facts and circumstances of the case” does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.”

16. These observations of the Hon'ble Supreme Court had been further reiterated in **(2022) 8 SCC 559, Deepak Yadav Vs. State of Uttar Pradesh and Another.**



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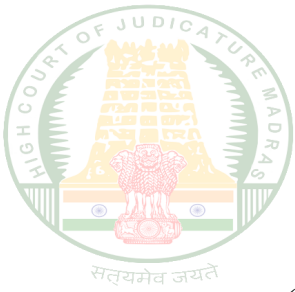
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17.A careful perusal of the ratio laid down would indicate that for proper administration of criminal justice system, even when an order of bail is granted, since it touches upon the liberty of the accused, the interest of the State and the victim of a crime, every Court while taking a decision to either grant or deny bail, should give necessary reasons. It had been stated that merely stating that the records had been perused or the facts and circumstances of the case warrant that an order should be passed is not sufficient. It had been stated that a reasoned decision lies at the heart of ensuring that justice is not only done but is seen to be done.

18.The grounds on which an order granting bail could be cancelled have also to be stated.

19.In *Dolat Ram Vs. State of Haryana, (1995) 1 SCC 349*, the Hon'ble Supreme Court had laid down the grounds on which there could be cancellation of an order granting bail. They are as follows:

- “(i) *interference or attempt to interfere with the due course of administration of justice;*
- (ii) evasion or attempt to evade the due course of justice;*



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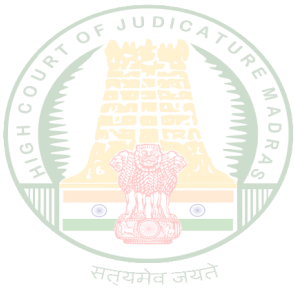
- (iii) *abuse of the concession granted to the accused in any manner;*
- (iv) *possibility of the accused absconding;*
- (v) *likelihood of/actual misuse of bail;*
- (vi) *likelihood of the accused tampering with the evidence or threatening witnesses.”*

20.In **(2022) 8 SCC 559, Deepak Yadav** referred *supra*, the Hon'ble Supreme Court had stated further grounds on which order granting bail could be cancelled. They are as follows:

“33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:

33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2. Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.



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33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

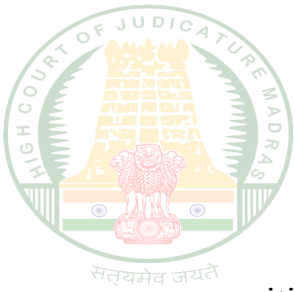
33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”

21..It is seen that, one of the main grounds in which order granting bail could be cancelled is that, bail was granted on untenable grounds and that the order granting bail is whimsical, capricious and perverse.

22.All these would indicate that while taking a decision to grant or deny bail, there must be indication of the reasons, which should be understood by the parties. The parties must know why bail had been granted or why bail had been denied. The accused, the victim and the State must be in



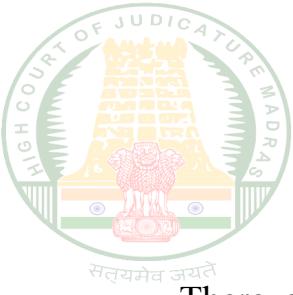
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a position to understand and appreciate that discretion had been used and exercised in proper manner. It is not an order which, could be passed according to the whims and franchise of any Presiding Officer. It cannot be passed on perverse grounds. It cannot also be stated that having perused the documents, the Presiding Officer was of impression that bail should be granted or denied.

23.In the instant case, it is seen that there has been a series of disputes between the defacto complainant on the one hand and the 1st accused on the other hand. It is a fact that they had been in serious relationship earlier, but that had broken down. The relationship had also extended to a professional collaboration in the production, distribution and in acting of a movie.

24.In the instant case, it is the allegation of the defacto complainant that the 1st accused had brought the other accused and had created a web around her from which she could not extricate herself. She had acted in the movie 'Cadavar' and had put her blood and sweat into it, but when it was distributed, she lost out. The movie was distributed to her disadvantage.

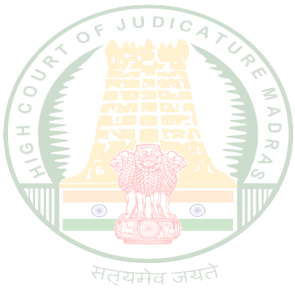


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There are also allegations of forgery having been committed of her own digital signature and amounts had also been misappropriated. All these factors will have to be investigated in detail.

25. In the status report filed by the 1st respondent, it had been stated that the 1st respondent could not even commence investigation. The 1st accused had been arrested but had been granted bail within seven days. The other accused have not co-operated during the course of investigation. It was therefore contended that the allegations being extremely serious, the grant of bail to the 1st accused had impeded the flow of investigation.

26. All these factors would point out that, the order granting bail had actually impeded the investigating agency from proceeding further. When any complaint is lodged raising an allegation of cognizable offence, it is only expected that investigation is completed within a reasonable period of time, but if orders are passed to scuttle further investigation, then the entire criminal justice system fails and falls. That should not happen.



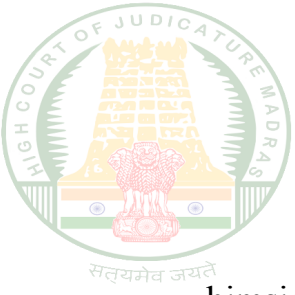
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27. In the instant case, very specifically since there was no condition imposed on the 1st accused to appear before the 1st respondent, he had never appeared before the 1st respondent. It is a different aspect that he would not flee from the justice or from the judicial procedure, but the crucial factor is whether the investigation had proceeded and the answer to that is, that the investigation had not even commenced, in view of the nature of the order passed. The 1st accused has a shield around him. He cannot be taken into custody. His presence cannot be demanded as a matter of right. He has the order of bail protecting him. He need not co-operate with the Investigating Agency, since there is no necessity for him to appear before the Investigating Agency. They can never even issue a notice calling upon him to appear. The order of bail has effectively put a stop to the investigation.

28. In view of all these observations, I am of the firm opinion that the order of bail necessarily will have to be interfered with.

29. This Court also entertained the discussions from the learned counsels, as to the nature of the further order which should be passed. It had been emphasized that, once bail order has been found to have been passed on



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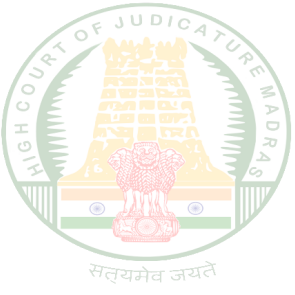
whimsical or perverse ground or even without any grounds or without any reasons and the High Court is the opinion that the order granting bail should be interfered with, then there is only one option available namely, to set aside the order granting bail and directing the accused to surrender before the respondent police.

30.In view of the same, this Criminal Original Petition stands allowed. The order dated 05.09.2022 in C.M.P.No.2445 of 2022 passed by the Judicial Magistrate Vannur, is set aside. The 1st accused is directed to surrender before the 1st respondent / Investigating Agency within a period of 15 days from the date on which this order is uploaded in the website of this Court, failing which the 1st respondent is directed to take him into custody.

22.12.2023

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Index : Yes / No
Neutral Citation : Yes / No
Speaking order : Yes / No

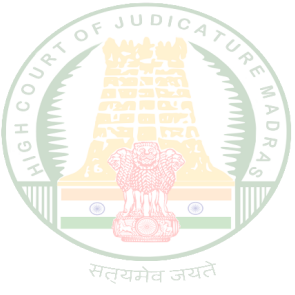


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To,

1. The Judicial Magistrate, Vanur.
2. Deputy Superintendent of Police
District Crime Branch,
Villupuram District.
3. The Public Prosecutor,
High Court of Madras.



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C.V.KARTHIKEYAN, J.

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